Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 76-308)

Reimbursable Services—Excess Cost of Preclearance Operations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 2, 1976.

Notice is hereby given that pursuant to section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning November 21, 1976.

Installation	*Biweekly excess cost*
Montreal, Canada	$12,741.00
Toronto, Canada	21,080.00
Kindley Field, Bermuda	5,389.00
Nassau, Bahama Islands	13,345.00
Vancouver, Canada	6,850.00
Winnipeg, Canada	1,203.00

(FIS-9-05)

JOHN A. HURLEY,
Assistant Commissioner,
Administration.

[Published in the FEDERAL REGISTER November 9, 1976 (41 FR 49560)]

(T.D. 76-309)

Presidential Proclamations 4463 and 4466—Modification of Tariffs on Certain Sugars, Sirups, and Molasses

Section 201(a)(2) of the Trade Expansion Act of 1962, Headnote 2 of Subpart A of Part 10 of Schedule 1 of the Tariff Schedules of the United States Proclamation No. 3822 of December 16, 1967 and Proclamation No. 4334 of November 16, 1974

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 4, 1976.

There are published below Presidential Proclamation 4463 of September 21, 1976 (41 FR 41681) and Presidential Proclamation 4466 of October 4, 1976 (41 FR 44031). Proclamation 4463 modifies the rates of duty applicable to items 155.20 and 155.30, Tariff Schedules of the United States. Proclamation 4466 modifies the effective date, September 21, 1976, of Proclamation 4463 for certain goods exported prior to the original effective date provided that they are entered, or withdrawn from warehouse, for consumption on or before November 8, 1976. (047938)

(CLA 2:R:CV:S)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

Title 3—The President

Proclamation 4466 **October 4, 1976**

Modification of Proclamation No. 4463[1] Regarding Tariffs on Certain Sugars, Sirups and Molasses

By the President of the United States of America

A Proclamation

By Proclamation No. 4463 of September 21, 1976, the President modified Proclamation No. 4334 of November 16, 1974, by establishing new rates of duty applicable to certain sugars, sirups, and molasses described in item numbers 155.20 and 155.30 of the Tariff Schedules of the United States, hereinafter referred to as the "TSUS" (19 U.S.C. 1202). Proclamation No. 4463 is effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after September 21, 1976.

Taking into account the factors cited in Proclamation No. 4463, and in order to alleviate hardships which may result from increasing the rate of duty with respect to certain goods that were exported prior to the effective date of that Proclamation, I find it appropriate to amend Proclamation No. 4463 to permit articles that were exported to the United States before the effective date of that Proclamation and that are entered, or withdrawn from warehouse, for consumption within a reasonable time following exportation, to continue to be

[1] 41 FR 41681.

dutiable at the rates provided in Proclamation No. 4334 of November 16, 1974.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Section 201(a)(2) of the Trade Expansion Act of 1962 (19 U.S.C. 1821(a)(2)), and in conformity with Headnote 2, Subpart A of Part 10 of Schedule 1 of the TSUS, do hereby proclaim that paragraph C of Proclamation No. 4463 of September 21, 1976, is hereby amended to read as follows:

"C. The Provisions of this Proclamation shall become effective with respect to articles entered, or withdrawn from warehouse, for consumption on and after September 21, 1976, and shall remain in effect until the President otherwise proclaims or until otherwise superseded by law. However, the provisions of this Proclamation shall not be effective with respect to articles exported to the United States before 12:01 A.M. (U.S. Eastern Daylight Savings Time), September 21, 1976, provided that such articles are entered, or withdrawn from warehouse, for consumption on or before November 8, 1976."

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October in the year of our Lord nineteen hundred seventy-six, and of the Independence of the United States of America the two hundred and first.

GERALD R. FORD.

Proclamation 4463 **September 21, 1976**

Modification of Tariffs on Certain Sugars, Sirups and Molasses

By the President of the United States of America

A Proclamation

1. By Proclamation 4334 of November 16, 1974, the President modified Subpart A, Part 10, Schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202, hereinafter referred to as the "TSUS") to establish, effective January 1, 1975, following expiration of the Sugar Act of 1948, a rate of duty and quota applicable to sugars, syrups, and molasses described in items 155.20 and 155.30 of the TSUS.

2. The President took the action described in recital 1 pursuant to the authority vested in him by the Constitution and statutes of the United States, including Section 201(a)(2) of the Trade Expansion Act of 1962 (19 U.S.C. 1821(a)(2)) and in conformity with Headnote 2 of Subpart A of Part 10 of Schedule 1 of the TSUS, which was added to the TSUS by Proclamation No. 3822 of December 16, 1967 (82

Stat. 1455), to carry out a trade agreement concluded pursuant to Section 201(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1821(a)) consisting of the 1967 Geneva Protocol to the General Agreement on Tariffs and Trade, including annexed thereto "Schedule XX", a schedule of United States trade concessions, together with the Final Act Authenticating the Results of the 1964–67 Trade Conference Held under the Auspices of the Contracting Parties to the General Agreement.

3. Headnote 2, Subpart A, Part 10 of Schedule 1 of the TSUS, which is based upon said trade agreement, provides in relevant part as follows:

"(i) That, if the President finds that a particular rate not lower than such January 1, 1968, rate, limited by a particular quota, may be established for any articles provided for in item 155.20 or 155.30, which will give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, he shall proclaim such particular rate and such quota limitation, . . .

"(ii) That any rate and quota limitation so established shall be modified if the President finds and proclaims that such modification is required or appropriate to give effect to the above considerations; . . ."

4. Section 201(a)(2) of the Trade Expansion Act authorizes the President to proclaim the modification or continuance of any existing duty or other import restriction or such additional import restrictions as he determines to be required or appropriate to carry out any trade agreement entered into under the authority of that Act.

5. I find that the modifications hereinafter proclaimed of the rates of duty applicable to items 155.20 and 155.30 of the TSUS, as established by Proclamation 4334, are appropriate to carry out the portion of a trade agreement referred to in recitals 2 and 3, and give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, acting under the authority vested in me by the Constitution and statutes, including Section 201(a)(2) of the Trade Expansion Act of 1962 and in conformity with Headnote 2, Subpart A of Part 10 of Schedule 1 of the TSUS, do hereby proclaim until otherwise superseded by law:

A. That part of Proclamation 4334 of November 16, 1974, which establishes a rate of duty inconsistent with that provided for in paragraph B. below is hereby terminated.

B. The rates of duty in rate column numbered 1 for items 155.20 and 155.30 of Subpart A, Part 10, Schedule 1 of the TSUS, are modified, and the following rates are established:

155.20	1.9875¢ per lb. less 0.028125¢ per lb. for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 1.284375¢ per lb.
155.30	Dutiable on total sugars at the rate per lb. applicable under Item 155.20 to sugar testing 100 degrees.

C. The provisions of this proclamation shall become effective with respect to articles entered, or withdrawn from warehouse, for consumption on and after the date of this Proclamation and shall remain in effect until the President otherwise proclaims or until otherwise superseded by law.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord nineteen hundred seventy-six and of the Independence of the United States of America, the two hundred and first.

GERALD R. FORD.

EDITORIAL NOTE: For the text of the President's statement and his letter to the Chairman of the United States International Trade Commission, both dated Sept. 21, 1976, on the modification of tariff rates, see the Weekly Compilation of Presidential Documents (vol. 12, no. 39).

(T.D. 76-310)

Manmade Fiber Textiles—Restriction on Entry

Restriction on entry of manmade fiber textile products in category 221 manufactured or produced in the Republic of Korea

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 4, 1976.

There is published below the directive of October 15, 1976, to the Commissioner of Customs from the Acting Chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of manmade fiber textile products in category 221 manufactured or produced in the Republic of Korea. This directive amends, but does not cancel, that Committee's directive of September 29, 1976 (T.D. 76-298).

This directive was published in the FEDERAL REGISTER on October 18, 1976 (41 FR 45897), by the Committee.

(QUO-2-1)

JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Domestic
and International Business
Washington, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

October 15, 1976.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive amends, but does not cancel, the directive issued to you on September 29, 1976 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 26, 1975, as amended, between the Governments of the United States and the Republic of Korea, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on October 18, 1976 and until further notice, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 221, produced or manufactured in the Republic of Korea and which have been exported to the United States during the twelve-month period which began on October 1, 1975 and extended through September 30, 1976.

Man-Made fiber textile products in Category 221 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of Category 221 in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on February 3, 1975 (40 FR 5010), as amended on December 31, 1975 (40 FR 60220).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of man-made fiber textile products from Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Com-

missioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance

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(T.D. 76-311)

Cotton Textiles—Restriction on Entry

Restriction on entry of cotton textiles manufactured or produced in Japan

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 4, 1976.

There is published below the directive of October 8, 1976, received by the Commissioner of Customs from the Acting Chairman, Committee for the Implementation of Textile Agreements, cancelling their directive of December 8, 1964 (T.D. 56337) from the President's Cabinet Textile Advisory Committee which required a visa on cotton textiles in category 7 manufactured or produced in Japan.

This directive was published in the FEDERAL REGISTER on October 14, 1976 (41 FR 45043).

(QUO-2-1)

JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Domestic and International Business
Washington, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

October 8, 1976.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive cancels and supersedes, effective on October 1, 1976, the directive of December 8, 1964 from the Chairman, President's Cabinet Textile Advisory Committee, which directed you to prohibit, effective on January 1, 1965, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 7, produced or manufactured in Japan, for which the Japan Cotton Textile Exporters Association, a trade association authorized by the Government of Japan, had not issued an appropriate export visa.

The actions taken with respect to the Government of Japan and with respect to imports of cotton textile products from Japan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance

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(T.D. 76-312)

Cotton Textiles—Restriction on Entry

Restriction on entry of cotton textiles and cotton textile products manufactured or produced in Pakistan

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 4, 1976.

There is published below the directive of October 7, 1976, from the Acting Chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton textiles and cotton textile products, manufactured or produced in Pakistan. This directive further amends, but does not cancel, that Committee's directives of June 28, 1972 (T.D. 72-208), and March 3, 1976 (T.D. 76-86).

This directive was published in the FEDERAL REGISTER on October 13, 1976 (41 FR 44884), by the Committee.

(QUO-2-1)

JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Domestic and International Business
Washington, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

October 7, 1976.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive further amends, but does not cancel, the directive of June 28, 1972 from the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1 through 64, produced or manufactured in Pakistan, for which the Government of Pakistan had not issued an export visa. It also amends, but does not cancel, the directive of March 3, 1976 which included the names of Government of Pakistan officials authorized to issue export visas and certifications for exempt textile products.

Under the terms of the Bilateral Cotton Textile Agreement of May 6, 1975, between the Governments of the United States and Pakistan, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, the directives of June 28, 1972 and March 3, 1976 are hereby further amended to add the name of Mr. Ejaz Ahmad to the list of officials authorized to issue export visas for cotton textiles and cotton textile products, produced or manufactured in Pakistan. A complete list of officials currently so authorized is enclosed.

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textiles and cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-

making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance

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Government of Pakistan Officials Authorized to Issue Export Visas For Cotton Textile Products Exported to the United States

Ejaz Ahmad
S. M. Anwar
Pir Mohammad Khan
Ghulam Mustafa
Sajjad Hussain Naqvi
Tariq Iqbal Puri
Abdul Ghaffar Qureshi
Mujib-ur-Rehman
S. A. Zaidi

(T.D. 76-313)

Bonds

Approval of consolidated aircraft bond (air carrier blanket bond) Customs Form 7605

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 4, 1976.

The following consolidated aircraft bond has been approved as shown below:

Name of principal and surety	Date Term Commences	Date of Approval	Filed with area director of Customs; amount
JAT – Yugoslav Airlines, 630 Fifth Ave., New York, NY; Boston Old Colony Ins. Co.	Oct. 11, 1976	Oct. 12, 1976	J. F. K. Airport; $100,000

The foregoing principal has not been designated as a carrier of bonded merchandise.

(BON-3-01)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 76-314)

Abstract of U.S. Customs Service Decision

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 4, 1976.

The following abstract of a U.S. Customs Service decision of general interest is published as a matter of information and guidance.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

CUSTOMS BONDS

T.D. 76-314: Use of facsimile signatures and seals.—Subject to approval by Headquarters, U.S. Customs Service, a surety may print facsimile signatures and seals on Customs bonds. Headquarters letter dated October 18, 1976.

(BON-1-R:CD:D)

(T.D. 76-315)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., October 8, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown

below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:	
October 4, 1976	$0.2051
October 5, 1976	0.2048
October 6, 1976	0.2051
October 7, 1976	0.2052
October 8, 1976	0.2052
Iran rial:	
October 4–8, 1976	$0.0141
Philippines peso:	
October 4–8, 1976	$0.1320
Singapore dollar:	
October 4, 1976	$0.4072
October 5, 1976	0.4070
October 6, 1976	0.4073
October 7, 1976	0.4072
October 8, 1976	0.4071
Thaland baht (tical):	
October 4–8, 1976	$0.0490

(LIQ–3)

JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 76–316)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS
Washington, D.C., October 15, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of

Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:	
October 11, 1976	Holiday
October 12, 1976	$0.2050
October 13, 1976	0.2050
October 14, 1976	0.2051
October 15, 1976	0.2050
Iran rial:	
October 11, 1976	Holiday
October 12–15, 1976	$0.0141
Philippines peso:	
October 11, 1976	Holiday
October 12–15, 1976	$0.1320
Singapore dollar:	
October 11, 1976	Holiday
October 12, 1976	$0.4070
October 13, 1976	0.4073
October 14, 1976	0.4072
October 15, 1976	0.4067
Thailand baht (tical):	
October 11, 1976	Holiday
October 12–15, 1976	$0.0490

(LIQ–3)

JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 76–317)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., October 22, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown

below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:	
October 18, 1976	$0. 2055
October 19, 1976	0. 2057
October 20, 1976	0. 2059
October 21, 1976	0. 2059
October 22, 1976	0. 2059
Iran rial:	
October 18–22, 1976	$0. 0141
Philippines peso:	
October 18–22, 1976	$0. 1320
Singapore dollar:	
October 18, 1976	$0. 4068
October 19, 1976	0. 4064
October 20, 1976	0. 4067
October 21, 1976	0. 4069
October 22, 1976	0. 4070
Thailand baht (tical):	
October 18, 1976	$0. 0490
October 19, 1976	0. 0490
October 20, 1976	0. 0495
October 21, 1976	0. 0495
October 22, 1976	0. 0490

(LIQ–3)

JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 76-318)

Drawback—Customs Regulations amended

Section 22.45, Customs Regulations, pertaining to the signing of documents and powers of attorney, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 22 – DRAWBACK

Section 22.45 of the Customs Regulations (19 CFR 22.45) currently provides that powers of attorney, in accordance with section 8.19 of this chapter, shall be required from certain persons signing certain specified documents applicable to drawback claims.

Pursuant to T.D. 73-175, dated June 15, 1973 (38 FR 17443), Part 8 of the Customs Regulations (19 CFR Part 8), Liability for Duties; Entry of Imported Merchandise, was deleted, and Part 141 (19 CFR Part 141), Entry of Merchandise, was added. The provisions formerly contained in section 8.19 are now set forth in sections 141.31 through 141.46 of the Customs Regulations (19 CFR 141.31-141.46).

Therefore, it is necessary to amend section 22.45 of the Customs Regulations by substituting a reference to sections 141.31 through 141.46 of this chapter for the reference to section 8.19 of this chapter.

Accordingly, Part 22 of the Customs Regulations (19 CFR Part 22) is hereby amended as set forth below:

PART 22 – DRAWBACK

Section 22.45 is amended by deleting the reference to "section 8.19", and substituting the reference "sections 141.31 through 141.46" therefor.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

Because this amendment merely conforms a reference within the Customs Regulations and requires no public initiative, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date. This amendment shall become effective upon publication in the FEDERAL REGISTER. (096060)

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

Approved November 8, 1976,
JERRY THOMAS,
Under Secretary of the Treasury.

[Published in the FEDERAL REGISTER November 16, 1976 (41 FR 50419)]

(T.D. 76-319)

Synopses of drawback decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 11, 1976.

The following are synopses of drawback rates and amendments issued July 27, 1976, to September 3, 1976, inclusive, pursuant to section 22.1 and 22.5, inclusive, Customs Regulations.

In the synopses below are listed, for each drawback rate or amendment approved under section 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the effective dates of exportation, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA-1-09)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(A) Company: Velsicol Chemical Corp., Chicago, IL
Articles: 2,4-D amine salts and Banvel formulations (Banvel D and Banvel K)
Merchandise: 2,4-D acid technical (2,4-dichlorophenoxyacetic acid)
Factory: Beaumont, TX

Statement signed: June 29, 1976
Basis of claim: Used in
Effective date: March 25, 1976
Rate forwarded to RC of Customs: Houston, July 27, 1976

(B) Company: Coca Cola Bottling Co. of Sacramento, Inc., Sacramento, CA
Articles: Beverages, still and carbonated
Merchandise: Liquid invert refined sugar
Factory: Sacramento, CA
Statement signed: April 27, 1976
Basis of claim: Used in
Effective date: July 1, 1975
Rate forwarded to RC of Customs: San Francisco, July 30, 1976

(C) Company: Minnesota Mining and Manufacturing Co., St. Paul, MN
Articles: Copy machine paper, chemically treated
Merchandise: Dual spectrum paper
Factories: Hartford City, IN, and Medford, OR
Statements signed: October 17, 1975, December 22, 1975
Basis of claim: Appearing in
Effective date: May 1, 1974
Rate forwarded to RC of Customs: San Francisco, September 3, 1976

(D) Company: Rohm and Haas Co., Philadelphia, PA
Articles: Dikar
Merchandise: Maleic acid
Factory: Philadelphia, PA
Statement signed: July 29, 1976
Basis of claim: Used in
Effective date: April 1, 1976
Rate forwarded to RC of Customs: Baltimore, August 19, 1976

(E) Reichhold Chemicals, Inc., White Plains, NY
Articles: Emulsion resins
Merchandise: Vinyl acetate monomer
Factories: Charlotte, NC; Kansas City, KS; So. San Francisco, CA; Tacoma, WA; and Morris, IL
Statement signed: April 19, 1976
Basis of claim: Used in
Effective date: August 22, 1974
Rate forwarded to RC of Customs: New York, September 1, 1976
Amends: T.D. 75-277-G

(F) Company: Paul Mueller Co., Springfield, MO
Articles: Equipment, food processing, dairy plant, carbonated beverage, brewery, chemical, textile and pharmaceutical, and poultry processing; tank heads, heat transfer surface; insulated and single wall tanks; and conveyor
Merchandise: Stainless steel coils, sheets and plates
Factory: Springfield, MO
Statement signed: August 16, 1976
Basis of claim: Appearing in
Effective date: March 26, 1973
Rate forwarded to RC of Customs: New York, September 1, 1976

(G) Company: Ethyl Corp., Richmond, VA
Articles: Ethyl antioxidant 701; ortho-isopropylphenol; ortho-secondary-butylphenol; ethyl antioxidant 733; ethyl antioxidant 735
Merchandise: Phenol
Factory: Orangeburg, SC
Statement signed: August 4, 1976
Basis of claim: Appearing in
Effective date: May 1, 1976
Rate forwarded to RC of Customs: New Orleans, August 23, 1976
Amends: T.D. 75–233–J

(H) Company: GAF Corp., New York, NY
Articles: Gantrez, ES 225, 335I, 425, 435, 3335N
Merchandise: Maleic anhydride
Factory: Calvert City, KY
Statement signed: June 28, 1976
Basis of claim: Used in
Effective date: December 3, 1974
Rate forwarded to RC's of Customs: Houston and Baltimore, August 2, 1976
Amends: T.D. 55580–I and especially T.D. 70–142–D

(I) Company: Hercules, Inc., Wilmington, DE
Articles: Melhi resin and Pexoil
Merchandise: Rosins
Factories: Hattiesburg, MS, and Burlington, NJ
Statement signed: May 28, 1976
Basic of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation, as shown by the schedule included in the statement.

Effective date: January 30, 1973
Rate forwarded to RC of Customs: Baltimore, August 5, 1976
Amends: T.D. 73–324–T, as amended

(J) Company: The S. W. Shattuck Chemical Co., Inc., Denver, CO
Articles: Molybdenum products
Merchandise: Molybdenite concentrates
Factory: Denver, CO
Statement signed: July 21, 1976
Basis of claim: Appearing in
Effective date: August 18, 1971
Rate forwarded to RC of Customs: New York, August 30, 1976

(K) Company: Rohm and Haas Co., Philadelphia, PA
Articles: Orthochrom/Lustrone colors and finishes
Merchandise: Butyl acetate and ethylene dichloride
Factory: Philadelphia, PA
Statement signed: June 11, 1975
Basis of Claim: Used in
Effective date: June 1, 1975
Rate forwarded to RC of Customs: Baltimore, August 2, 1976
Amends: T.D. 71–167–A

(L) Company: Borg-Warner Corp., Chicago, IL
Articles: Pellets, plastic resin
Merchandise: Plastic resin powders
Factories: Oxnard, CA; Akron, OH; Ottawa, IL; Washington, WV; and Piscataway, NJ
Statement signed: May 7, 1976
Basis of claim: Used in
Effective date: February 1, 1973
Rate forwarded to RC of Customs: New York, August 13, 1976

(M) Company: General Electric Co., Syracuse, NY
Articles: Picture tubes, color (television)
Merchandise: Electron guns (mounts)
Factory: Syracuse, NY
Statement signed: August 16, 1976
Basis of claim: Appearing in
Effective date: September 3, 1974
Rate forwarded to RC of Customs: New York, August 26, 1976

(N) Company: Frank IX & Sons, New York, NY
Articles: Piece goods, woven
Merchandise: Polyester yarn
Factories: Charlottesville, VA; Lexington, NC; New Holland, PA
Statement signed: July 22, 1976
Basis of claim: Used in
Effective date: March 14, 1975
Rate forwarded to RC of Customs: New York, August 24, 1976

(O) Company: Day-Glo Color Corp., Cleveland, OH
Articles: Pigments, paints, coating compositions, printing inks, and bases
Merchandise: Toluene sulfonamide
Factory: Cleveland, OH
Statement signed: June 9, 1976
Basis of claim: Used in
Effective date: May 11, 1976
Rate forwarded to RC of Customs: Chicago, IL, August 23, 1976

(P) Company: Southeastern Public Service Co., Kansas City, MO
Articles: Pineapple juice blend, frozen concentrated, pineapple juice and orange juice blend, frozen concentrated, and pineapple juice and grapefruit juice blend, frozen concentrated
Merchandise: Unsweetened concentrated pineapple juice
Factory: Bonner Springs, KS
Statements signed: January 30, 1976, and July 2, 1976
Basis of claim: Appearing in
Effective dates: For the account of Castle & Cooke, Inc., July 1, 1972
For Southeastern's own account, December 31, 1975
Rate forwarded to RC of Customs: San Francisco, August 19, 1976

(Q) Company: Juice Bowl Products, Inc., Lakeland, FL
Articles: Pineapple juice blend, frozen concentrated, pineapple juice and orange juice blend, frozen concentrated, and pineapple juice and grapefruit juice blend, frozen concentrated
Merchandise: Unsweetened concentrated pineapple juice
Factory: Lakeland, FL
Statement signed: April 9, 1976
Basis of claim: Appearing in
Effective dates: For account of Castle & Cooke, Inc., August 1, 1973
For Juice Bowl Products' own account, January 5, 1976

Rate forwarded to RC of Customs: San Francisco, August 18, 1976

(R) Company: Joan of Arc Co., Peoria, IL
Articles: Pineapple juice blend, frozen concentrated, pineapple juice and orange juice blend, frozen concentrated, and pineapple juice and grapefruit juice blend, frozen concentrated
Merchandise: Unsweetened concentrated pineapple juice
Factory: Hoopeston, IL
Statements signed: March 9, 1976 and June 23, 1976
Basis of claim: Appearing in
Effective dates: For the account of Castle & Cooke, Inc., July 1, 1972
For Joan of Arc's own account, January 1, 1976
Rate forwarded to RC of Customs: San Francisco, August 18, 1976

(S) Company: Reichhold Chemicals, Inc., White Plains, NY
Articles: Plasticizers
Merchandise: Iso decyl alcohol
Factories: Carteret and Elizabeth, NJ
Statement signed: May 4, 1976
Basis of claim. Used in
Effective date: October 1, 1974
Rate forwarded to RC of Customs: New York, September 1, 1976
Amends: T.D. 51767–R, as amended

(T) Company: Rohm and Haas North Carolina Inc., Fayetteville, NC
Articles: Polyester yarn, textured (stretch and set)
Merchandise: Polyester chips
Factory: Fayetteville, NC
Statement signed: March 17, 1976
Basis of claim: Used in
Effective date: March 1, 1976
Rate forwarded to RC of Customs: Baltimore, August 31, 1976

(U) Company: The Henry G. Thompson Co., Branford, CT
Articles: Saw blades, hack and band
Merchandise: Steel in sheet, coil or strip
Factory: Branford, CT
Statement signed: June 30, 1976
Basis of claim: Used in
Effective date: June 8, 1971
Rate forwarded to RC of Customs: Boston, August 30, 1976

(V) Company: Velsicol Chemical Corp., Chicago, IL
Articles: Technical Phosvel
Merchandise: 4-bromo 2,5 dichlorophenol and benzene phosphorous thiodichloride
Factory: Pasadena, TX
Statement signed: July 26, 1976
Basis of claim: Used in
Effective date: November 6, 1974
Rate forwarded to RC of Customs: Houston, August 13, 1976
Revokes: T.D. 76-235-M

(W) Company: Hunt-Wesson Foods, Inc., Fullerton, CA
Articles: Tomato products, processed
Merchandise: Tomato paste
Factories: Fullerton, Hayward, Davis, and Oakdale, CA
Statement signed: March 17, 1976
Basis of claim: Appearing in
Effective date: January 1, 1975
Rate forwarded to RC of Customs: San Francisco and Los Angeles, August 13, 1976
Amends: T.D. 67-160-R

(X) Company: Compania de Conservas, Casera, Inc., Barceloneta, PR
Articles: Tomato sauce
Merchandise: Tomato paste
Factory: Barceloneta, PR
Statement signed: April 28, 1976
Basis of claim: Appearing in
Effective date of exportation: September 11, 1975
Effective date of exportation when acting as agent for Hunt-Wesson Foods, Inc.: January 1, 1975
Rate forwarded to RC of Customs: San Francisco. August 24, 1976

(Y) Company: Mack Trucks, Inc., Allentown, PA
Articles: Trucks, tractors, truck-tractors, fire apparatus, buses, off-highway equipment, replacement assemblies or component parts (Mack products)
Merchandise: Automotive component parts
Factories: Allentown, PA; Hagerstown, MD; Somerville, NJ; Cortland, NY; and Hayward, CA
Statement signed: May 26, 1976
Basis of claim: Used in

222-128—76——4

Effective date: September 1, 1963
Rate forwarded to RC of Customs: Baltimore, July 30, 1976
Amends: T.D. 50145–N, as amended, in particular by T.D. 71–74–Y

(Z) Company: Peck and Hale, Inc., West Sayville, NY
Articles: Wire rope slings, tie downs, and lashings
Merchandise: Plow steel wire ropes
Factory: West Sayville, NY
Statements signed: June 20, 1975, and April 7, 1976
Basis of claim: Appearing in
Effective date: May 5, 1975
Rate forwarded to RC of Customs: New York, August 4, 1976

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1177)

THE UNITED STATES v. NILS A. BOE, CHIEF JUDGE, UNITED STATES CUSTOMS COURT, RESPONDENT; THE SERVCO COMPANY, RESPONDENT – PARTY IN INTEREST, No. 76-22 (— F. 2d —)

1. PETITION FOR WRIT OF PROHIBITION AND MANDAMUS–ALL WRITS ACT 28 USC 1651(a)

Petition for writ of prohibition and mandamus (All Writs Act, 28 USC 1651(a)) against the Chief Judge of the United States Customs Court seeking (1) to prohibit the Customs Court from asserting jurisdiction over a civil action, (2) to prohibit the Customs Court from engaging in any other conduct inconsistent with the writ, (3) to order the Customs Court to vacate certain orders, (4) to order dismissal of a civil action for lack of jurisdiction, and (5) to order return of official entry papers to appropriate Customs officials. The petition is granted.

2. SCOPE OF JURISDICTION–CUSTOMS COURT

The consent of the sovereign to be sued in the Customs Court is found in 28 USC 1582, which specifically confines the jurisdiction of the Customs Court to actions in which (1) "a protest has been filed, as prescribed by section 514 of the Tariff Act of 1930, as amended [19 USC 1514]," (2) such protest has been "denied in accordance with * * * section 515 of the Tariff Act of 1930, as amended [19 USC 1515]," and (3) "all liquidated duties * * * have been paid." In this case, it is undisputed that no liquidation has occurred; therefore, at least two of the § 1582-mandated terms of consent are missing in the present case, i.e., term (1), protest after liquidation, and term (3), payment of all liquidated duties. Hence the Customs Court was clearly devoid of jurisdiction over the subject civil action.

3. ALL WRITS ACT, 28 USC 1651(a)–EVIDENCE–EXCEPTIONAL CIRCUMSTANCES

The CCPA has the power to grant a writ of prohibition and mandamus under the All Writs Act, 28 USC 1651(a). The party requesting such a writ has the burden of showing a clear and indisputable right thereto and must show exceptional circumstances necessitating review before final judgment below. Here, the mandatory terms of the statute (28 USC 1582) conferring jurisdiction on the Customs Court, taking all of the fact allegations of the complaint as true, were clearly absent. The insistence of the trial judge upon retaining jurisdiction under such circumstances was extrastatutory. The attempted exercise of jurisdiction constitutes an exceptional circumstance requiring corrective action by writ of prohibition and mandamus.

United States Court of Customs and Patent Appeals, November 4, 1976

Petition for Writ of Prohibition and Mandamus

[Petition Granted]

Rex E. Lee, Assistant Attorney General, *Andrew P. Vance*, Chief, Customs Section, *Mark K. Neville, Jr.*, counsel of record, for Petitioner.

Nils A. Boe, counsel of record, for Respondent.

Robert Glenn White (Glad, Tuttle and White) counsel of record, for Respondent-Party-In-Interest.

E. Thomas Honey, counsel of record, for Amicus Curiae. Before Markey, *Chief Judge*, Rich, Baldwin, Lane and Miller, *Associate Judges*.

MARKEY, Chief Judge.

[1] The United States (petitioner), pursuant to 28 USC 1651(a), petitions for a writ of prohibition and mandamus against The Honorable Nils A. Boe, Chief Judge of the United States Customs Court (respondent), seeking, in Consolidated Customs Court No. 75–5–01351, *Servco Company* v. *United States*, (1) to prohibit the Customs Court from asserting jurisdiction over that civil action, (2) to prohibit the Customs Court from engaging in any other conduct inconsistent with the writ, (3) to order the Customs Court to vacate the Orders entered on January 12 and March 1, 1976, (4) to order dismissal of the civil action for lack of jurisdiction, and (5) to order return of the official entry papers to the appropriate District Directors of Customs. The petition is granted.

Issues

The issues are (1) whether the Customs Court lacks jurisdiction over the involved civil action and, if so, (2) whether this court should exercise its discretionary authority to issue the requested writ.

Background

The imported merchandise is claimed by the importer to consist of nonmagnetic austenitic drill collars identical to those in *United States* v. *Servco Co.*, 60 CCPA 137, C.A.D. 1098, 477 F. 2d 579 (1973). The present merchandise was entered at New Orleans on July 8, July 24, and August 29, 1974, and at Houston on October 17, 1974, and classified under items 610.51 and 610.52, TSUS.

On December 3, 1974, and January 14, 1975, counsel for importer wrote to the District Directors of New Orleans and Houston, respectively, stating; that the merchandise was identical to that held classifiable under item 664.05 in C.A.D. 1098, supra; that there had been no limitation of that decision; that the importer had tendered duties "excessive" in view of C.A.D. 1098; and that prompt and "proper" liquidation was requested.

The response of the Director at Houston stated:

> This office is presently acting under advice from the Assistant Chief Counsel, Customs Court Litigation, New York, New York, in not following the decision in *The United States* v. *The Servco Company*, C.A.D. 1098. This advice was given to all interested ports, and read in part:
>
> The Government is presently considering the possibility of limiting that decision and retrying the issues therein. Consequently, the decision should not be followed, either in the review of protests or in current liquidations, pending resolution of that question.

Regarding the Directors' responses as "decisions" of Customs officers, counsel for importer filed "protests" on January 20, 1975, and February 18, 1975, which were purportedly denied. The "protests" repeated, essentially, the statements in counsel's letters referred to above, adding reference to the Directors' "refusal" to comply with the decision in C.A.D. 1098 and to denial of due process of law.

On May 27, 1975, and July 1, 1975, the importer initiated seperate actions in the Customs Court, which were consolidated to create the subject civil action on September 15, 1975.

In October 1975, the importer filed a complaint alleging, *inter alia*, that the decisions protested were those of the District Directors referred to above and that the goods were identical to those in C.A.D. 1098. The complaint ended with this prayer:

> THEREFORE, plaintiff prays for judgment overruling the decision of the responsible Customs officers at the Ports of entry in refusing to direct entry and liquidation of the merchandise in issue under Item 664.05, TSUS, and directing that the said

> referenced appropriate and responsible Customs officers liquidate the entries in question under Item 664.05, TSUS, as amended, and for refund of the exactions made of the plaintiff, upon liquidation under Item 664.05, TSUS, as amended.

Petitioner moved to dismiss the action for lack of jurisdiction because the entries had not yet been liquidated, i.e., because the "protests" were premature. The importer responded, asserting jurisdiction existed pursuant to 19 USC 1514(b)(2)(B). Petitioner filed a replay accompanied by two affidavits, each stating that no liquidation had occurred and that no decision refusing to liquidate had been made. Both affidavits expressed an intent to follow C.A.D. 1098, the second affidavit ending with this assertion:

> In fact, since the filing of the instant protest, a decision has been reached to liquidate these entries in accordance with the Court of Customs and Patent Appeals decision in C.A.D. 1098, insofar as they involve merchandise which is in all material respects similar to the merchandise then before the court, and equally dedicated to use as drill collars.

Petitioner argued in its reply that the Directors never "decided" not to liquidate; that 19 USC 1514(b)(2)(B) is inapplicable; that no time limit exists for liquidation; and that the Customs Court has no equity jurisdiction.

On January 9, 1976, respondent issued an order (entered on January 12) that a proposed judgment based on an agreed statement of facts be submitted within 90 days or, in the alternative, that an answer be filed by petitioner within 120 days. The order included the following as its basis:

> It appearing under the statutes of the United States and the rules of court that jurisdiction properly has been obtained in this court and that the right of the plaintiff to present his cause of action for speedy determination has been unnecessarily prolonged, and
>
> It further appearing * * * that the defendant has reconsidered its prior decision with respect to the classification of the merchandise involved in the within action provided that such material is in all respects similar to the merchandise involved in the Court of Customs and Patent Appeals decision C.A.D. 1098 and that, accordingly, no disagreement between plaintiff and defendant with respect to the issues originally involved herein may continue to exist * * *.

Petitioner then moved for rehearing and reconsideration or, in the alternative, for certification of an interlocutory appeal pursuant to 28 USC 1541(b). On March 1, 1976, respondent denied both

motions and filed a Memorandum Opinion reading, in its entirety, as follows:

> In its prior order of January 9, 1976, the court has provided two alternatives:
>
> 1. The settlement of the within action through the established judicial prodcedure of the forum in which the action is presently pending, or
> 2. The filing of an answer by the defendant.
>
> If the provision in the prior order of the court relating to a voluntary settlement on an agreed statement of facts—which customarily includes consultation with and the recommendation of the customs service—is feared by the defendant to be an application of supervisory powers over this administrative department, the fullest opportunity to proceed with the orderly trial of all issues of fact and law in the instant case is afforded by the filing of an answer.
>
> The joinder of issue and subsequent trial may properly permit a more complete consideration of all of the facts alleged by the plaintiff in its complaint presently on file prior to a determination of the question of jurisdiction raised by the defendant herein.

The goods have been entered and released by Customs. Servco has deposited the estimated duties provided under item 610.52 with the additional duties of items 607.01 and 607.02, while asserting its entitlement to the lower duty of item 664.05. To date there has been no liquidation, and there can be none while this action is pending, the entry papers being in the custody of the court.

Before us, petitioner filed an exhaustive brief accompanied by numerous exhibits. A response was filed by respondent. Briefs were filed by the respondent-party in interest (importer) and by the Association of the Customs Bar as *amicus curiae*. Petitioner filed a reply.

Opinion

Jurisdiction

The United States cannot be sued without explicit waiver of its sovereign immunity. *Affiliated Ute Citizens* v. *United States*, 406 U.S. 128 (1972); *United States* v. *King*, 395 U.S. 1 (1969); *Honda* v. *Clark*, 386 U.S. 484 (1967); *Soriano* v. *United States*, 352 U.S. 270 (1957). Statutes waiving immunity, and thereby defining jurisdiction, must be strictly construed. *United States* v. *Sherwood*, 312 U.S. 584

(1941); *Blackfeather* v. *United States*, 190 U.S. 368 (1903). In *United States* v. *Sherwood*, supra, at 586, the Supreme Court stated:

> The United States, as sovereign, is immune from suit save as it consents to be sued, * * * and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit. [Citations omitted.]

[2] The consent of the sovereign to be sued in the Customs Court is found in 28 USC 1582,[1] which both establishes and limits the jurisdiction of that court. The terms of consent herein applicable are three in number. They specifically confine the jurisdiction of the Customs Court to actions in which (1) "a protest has been filed, as prescribed by section 514 of the Tariff Act of 1930, as amended [19 USC 1514]," [2]

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[1] 28 USC 1582:

§ 1582. Jurisdiction of the Customs Court.

(a) The Customs Court shall have exclusive jurisdiction of civil actions instituted by any person whose protest pursuant to the Tariff Act of 1930, as amended, has been denied, in whole or in part, by the appropriate customs officer, where the administrative decision, including the legality of all orders and findings entering into the same, involves: (1) the appraised value of merchandise; (2) the classification and rate and amount of duties chargeable; (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury; (4) the exclusion of merchandise from entry or delivery under any provisions of the customs laws; (5) the liquidation or reliquidation of an entry, or a modification thereof; (6) the refusal to pay a claim for drawback; or (7) the refusal to reliquidate an entry under section 520(c) of the Tariff Act of 1930, as amended;

* * * * * * *

(c) The Customs Court shall not have jurisdiction of an action unless (1) either a protest has been filed, as prescribed by section 514 of the Tariff Act of 1930, as amended, and denied in accordance with the provisions of section 515 of the Tariff Act of 1930, as amended, * * * and (2) * * * all liquidated duties, charges or exactions have been paid at the time the action is filed.

* * * * * * *

[2] 19 USC 1514:

§ 1514. Protest against decision of appropriate customs officer.

(a) Finality of decisions; return of papers.

[D]ecisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

(1) the appraised value of merchandise;

(2) the classification and rate and amount of duties chargeable;

(3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

(4) the exclusion of merchandise from entry or delivery under any provision of the customs laws;

(5) the liquidation or reliquidation of an entry, or any modification thereof;

(6) the refusal to pay a claim for drawback; and

(7) the refusal to reliquidate an entry under section 1520(c) of this title,

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Customs Court in accordance with section 2632 of Title 28 within the time prescribed by section 2631 of that title. * * *.

(b) Form, number, and amendment of protest; filing of protest.

(1) A protest of a decision under subsection (a) of this section shall be filed in writing with the appropriate customs officer designated in regulations prescribed by the Secretary, setting forth distinctly and specifically each decision described in subsection (a) of this section as to which protest is made; * * *

(2) A protest of a decision, order, or finding described in subsection (a) of this section shall be filed with such customs officer within ninety days after but not before—

(A) notice of liquidation or reliquidation, or

(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

(2) such protest has been "denied in accordance with * * * section 515 of the Tariff Act of 1930, as amended [19 USC 1515]," [3] and (3) "all liquidated duties * * * have been paid." Those jurisdiction-conferring terms are mandatory, the statute having provided no room or opportunity for the exercise of discretion.

It is undisputed that no liquidation has occurred herein. Protests purportedly filed under the authority of § 1514(b)(2)(A) would therefore be premature and non-justiciable in the Customs Court. Importer says its protest is against the "arbitrary action" of the Customs Service "requiring a party to enter and pay duty on merchandise * * * adjudicated to be entitled to a different rate of duty, and [refusing] to act on the entries so that the normal protest procedure might be utilized, all without proper and public authorization from the Commissioner of Customs." Importer thus admits that it is not utilizing the "normal protest procedure."

The argument that the protests herein are among those prescribed in § 1514(b)(2)(B) is ill founded. The "circumstances" *sub judice* are clearly not those to which "subparagraph (A)," (i.e., a notice of liquidation) is "inapplicable." [4] On the contrary, liquidation is precisely what is sought by the importer. Indeed, importer seeks a prompt and specific liquidation under its claimed item 664.05.

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[3] 19 USC 1515:

§ 1515. Review of protests; administrative review and of decisions; request for accelerated disposition of protest.

(a) Unless a request for an accelerated disposition of a protest is filed in accordance with subsection (b) of this section the appropriate customs officer, within two years from the date a protest was filed in accordance with section 1514 of this title, shall review the protest and shall allow or deny such protest in whole or in part. Thereafter, any duties, charge, or exaction found to have been assessed or collected in excess shall be remitted or refunded and any drawback found due shall be paid. * * * Notice of the denial of any protest shall be mailed in the form and manner prescribed by the Secretary.

(b) A request for accelerated disposition of a protest filed in accordance with section 1514 of this title may be mailed by certified or registered mail to the appropriate customs officer any time after ninety days following the filing of such protest. For purposes of section 1582 of Title 28, a protest which has not been allowed or denied in whole or in part within thirty days following the date of mailing by certified or registered mail of a request for accelerated disposition shall be deemed denied on the thirtieth day following mailing of such request.

[4] The importer argues that § 1514(b)(2)(B) *must* be applicable, in order that liquidation not be an "impenetrable wall," or "an absolute bar" to Customs Court authority, or an "impenetrable shield" for all Customs Service actions prior to liquidation, and in order that § 1514(b)(2)(B) not be "removed" or "repealed." Petitioner responds that § 1514(b)(2)(B) provides for protests against decisions described at § 1514(a)(3) and (4). Having determined that § 1514(b)(2)(B) is not applicable to the protests herein, it is unnecessary for us to consider decisions and protests to which that subsection might be applicable.

Moreover, the dispute between the parties concerns classification of the merchandise.[5] Classification is but one step in the liquidation process, appraisement being another. Hence the subject civil action directly involves the liquidation procedure. Such actions are governed by § 1514(b)(2)(A). Liquidation not having occurred, importer's protests were premature. *Faber, Coe & Gregg (Inc.)* v. *United States*, 19 CCPA 8, 14, T.D. 44851, *cert. denied*, 284 U.S. 634 (1931); *Waddell* v. *United States*, 13 Ct. Cust. Appls. 424, 427, T.D. 41342 (1926); *Best Foods, Inc.* v. *United States*, 37 Cust. Ct. 1, C.D. 1791, 147 F. Supp. 749 (1956). As Judge Newman stated, as recently as 1973 in *Nikko Boeki Int'l, Inc.* v. *United States*, 71 Cust. Ct. 16, C.D. 4464:

> In sum, protest Nos. 30011–000770 and 30011–000771 were filed prematurely, in contravention of the provisions of section 514(b)(2), as amended, and consequently, this court lacks jurisdiction thereof.

Further, exercise of Customs Court jurisdiction at the classification stage of the liquidation process would foster piecemeal litigation, a result which the requirement for payment of all *liquidated* duties prior to suit, 28 USC 1582(c), is clearly designed to avoid. The importer has paid the estimated duties to obtain entry of the merchandise. However, there having been no liquidation, the full amount of *liquidated* duties due can be neither known or paid. Until those duties are paid, the Customs Court has no jurisdiction to hear any complaint concerning the classification of the merchandise entered. *A. W. Fenton Co.* v. *United States*, 55 CCPA 54, C.A.D. 933 (1968).

The importer's presumption (that the Customs Service must either follow C.A.D. 1098 [6] or issue a prompt notice [7] limiting its application),

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[5] At least initially. The court order of January 12, 1976, recognized that the United States had decided to classify as requested by importer if the merchandise was similar to that in C.A.D. 1098. We admit to some difficulty in understanding why the action was not thereupon dismissed for failure to meet the constitutional requirement that a case or controversy must exist before federal jurisdiction will attach.

Prompt dismissal would have served the interest of all concerned. With immediate return of the entry papers, the liquidation sought by importer might by now have been completed. Importer's complaint that the Customs Service has no "unreviewable right to hold [its] money 'on the back burner' while [reflecting] on whether * * * to refund it" has a hollow ring, when it is importer's resistance to dismissal that delays the refund (if one be due) of its money.

Because of growing interest in the Customs Court's jurisdiction (generated at least in part by crowded dockets in the district courts), and in view of petitioner's indication of recent filing of suits like the subject civil action, we deem advisable the present clarification of the jurisdiction of the Customs Court as it relates to the facts herein.

[6] The advice of the Assistant Chief Counsel, that our decision "should not be followed," may at first blush seem a shocking arrogance injurious to the "domestic tranquility" envisaged in the Constitution. The fact is, however, that the record of the Customs Service, over the 67 year history of this court, is remarkably free of charges of truculence or of refusal to follow court decisions. That record is enhanced when the options of the Customs Service are understood. See *United States* v. *Stone & Downer Co.*, 274 U.S. 225 (1927); *United States* v. *Boone*, 38 CCPA 89, C.A.D. 445 (1951); *Lamont, Corliss & Co.* v. *United States*, 18 CCPA 431, T.D. 44682, *cert. denied*, 284 U.S. 622 (1931). Moreover, the subject civil action depends entirely upon importer's assertion that the present merchandise is identical to that in C.A.D. 1098, an assertion not administratively considered when the complaint was filed, so far as the record indicates.

[7] See 19 CFR 152.16(e)(1975).

the importer's resulting conclusion (that failure to do one or the other promptly [8] is a violation of due process), and the importer's unsupported, and unsupportable assumption (that the Customs Court can prevent such "violation")[9] need not be definitively treated at this point. It is sufficient to observe that the subject civil action, absent those considerations, is simply an action for classification of merchandise under a certain claimed provision of the Tariff Schedules. However, at least two of the § 1582-mandated terms of consent to such actions are missing in the present case, i.e., term (1), protest after liquidation, and term (3), payment of all liquidated duties.[10] Hence the Customs Court was clearly devoid of jurisdiction over the subject civil action.

No citation of specific statutory or factual basis for jurisdiction over the subject civil action appears in the orders or memorandum opinion below. No effort to support jurisdiction is made before us by either the respondent or *amicus*. Importer devotes only a few sentences to §1514(b)(2)(B). The entire presentations here of respondent and *amicus*, and almost the entire presentation of importer, are limited to reasons why the writ should not issue.

The Writ

[3] All parties recognize that this court has the power to grant the requested writ. 28 USC 1651(a). The determination of whether that power should be exercised entails our full recognition of the extraordinary nature of the relief requested. Though the power is curative. it is strong medicine and its use must therefore be restricted to the

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[8] Importer demanded liquidation within five months of the first New Orleans entry and within three months of the Houston entry. As noted above, liquidation was being withheld because the government was considering the possibility of limiting the decision in C.A.D. 1098 and retrying the issue. The suspension of liquidation pending receipt of instructions was succinctly supported and clarified in the scholarly opinion of Judge Re of the Customs Court in *Seneca Grape Juice Corp.* v. *United States*, 71 Cust. Ct. 131, C.D. 4486, 367 F. Supp. 1396 (1973), *motion to accept appeal denied*, 61 CCPA 118, 492 F. 2d 1235 (1974).

[9] Absent jurisdiction, an extended discussion of respondent's belief that "any" Article III court should possess inherent powers which "might be characterized as supervisory in nature," or of whether the Customs Court has "equity powers," in unnecessary. The Customs Court has no power to supervise the review of importations by the Customs Service. *Matsushita Electric Industrial Co.* v. *United States Treasury Department* 60 CCPA 85, C.A.D. 1086, 485 F. 2d 1402, *cert. denied*, 414 U.S. 821 (1973). The Customs Court has itself so held in numerous decisions. Equity power can apply only to matters within a court's jurisdiction and cannot be exercised in disregard of the mandatory requirements of the jurisdictional statute. *American Mail Line, Ltd.* v. *United States*, 34 CCPA 1, C.A.D. 335 (1946); *Jacksonville Paper Co.* v. *United States*, 30 CCPA 159, C.A.D. 228, *cert. denied*, 320 U.S. 737 (1943). The jurisdiction of Article III courts, below the Supreme Court, is limited and dependent upon Congressional implementation of Article III. Wright, *Handbook of the Law of Federal Courts* § 7 (2d ed. 1970); Wechsler, *The Courts and the Constitution* 7 (1965).

[10] Though not definitively argued, the record fails to indicate that term (2), denial of a protest under § 1515 (note 3, supra) was met. There is no indication that a request for accelerated disposition of importer's protests was filed. In the absence of such request, § 1515 provides a two year period for review of protests and refund of excess duties paid.

most serious and critical ills. Use of the power is thus not unfettered. On the contrary, its reparative function is to be sparingly employed.[11]

A basic tenet of our jurisprudence is that appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until final judgment has been rendered by the trial court. *Will* v. *United States*, 389 U.S. 90 (1967). Hence the party requesting a writ of prohibition or mandamus has the burden of showing a clear and indisputable right thereto, *Bankers Life & Casualty Co.* v. *Holland*, 346 U.S. 379 (1953), and must show exceptional circumstances necessitating review before final judgment below. See *De Beers Consolidated Mines Ltd.* v. *United States*, 325 U.S. 212 (1945).

We find such exceptional circumstances here. A decision was made that the Customs Court had jurisdiction. That decision was again made on motion for reconsideration. [12] A request under 28 USC 1541 (b) for interlocutory appeal on the question of jurisdiction was denied. Yet, as above indicated, the mandatory terms of the statute conferring jurisdiction of the Customs Court, taking all of the fact allegations of the complaint as true, were clearly absent. The insistence of the trial judge upon retaining jurisdiction under such circumstances was extra-statutory. [13]

However sincere and well-intentioned may be the judge, an attempt, by any court, to exercise a non-existent jurisdiction is an exceptional circumstance of import most grave. Such an attempt tends to chip away at that particular foundation stone in our constitutional scheme described as the separation of powers. As above indicated, courts are, in a sense, chartered institutions, operating under authority granted by the representatives of the people. Lawfully conferred jurisdiction is essential. Jurisdiction cannot be presumed, *Smith* v. *McCullough*,

[11] Large segments of respondent's and *amicus'* presentations here are devoted to the fear that a grant of the writ in this case will lead to repeated bypassing of normal appellate procedures. That argument would apply to any grant of the writ and, if employed as a basis of decision, would render 28 USC 1651(a) a nullity. It is enough to say that our decision herein is limited to the facts of this case. We have no reason to suppose that litigants before the Customs Court will abuse the writ by flooding this court with insufficiently based petitions, or to suppose that such improper petitions would not be promptly dismissed. See Gholz, *Extraordinary Writ Jurisdiction of the CCPA in Patent and Trademark Cases*, 59 J. PAT. OFF. SOC'Y 356 (1976).

[12] Respondent nonetheless states that the writ is inappropriate "without first giving to the trial court a full opportunity to pass upon the jurisdictional issue." *Amicus* and importer join that position. Aside from the fact that the trial court had and twice took that full opportunity ("It appearing * * * that jurisdiction properly has been obtained in this court * * *."), we have been cited to no fact issue requiring resolution before the jurisdictional issue could be decided and a diligent search of the record discloses no such fact issue. We fail to understnad, therefore, the reference in the memorandum opinion below to the need for "more complete consideration of all the facts alleged by the plaintiff" or the reference to the necessity of a trial to determine "the question of jurisdiction raised by the defendant."

[13] Reference by *amicus* to respondent's acting within his "discretionary powers" in ordering "petitioner to file its answer and to proceed to trial" is inapt. No discretion exists to disregard the jurisdictional requirements of 28 USC 1582 and 19 USC 1514. Reference in an order to "the statutes of the United States" or to "the rules of court" cannot confer jurisdiction where none exists.

270 U.S. 456 (1926); *Hanford* v. *Davies*, 163 U.S. 273 (1896), or enlarged or conferred by agreement of the parties, *Mitchell* v. *Maurer*, 293 U.S. 237 (1934); *S. Stern & Co.* v. *United States*, 51 CCPA 15, C.A.D. 830, 331 F. 2d 310 (1963), *cert. denied*, 377 U.S. 909 (1964), or by the court itself, *United States* v. *Torch Manufacturing Co., Inc.*, 62 CCPA 41, C.A.D. 1143, 509 F. 2d 1187 (1975). A court's attempted exercise of power clearly beyond its charter violates its very *raison d' être*. Restraint is required.

As the Supreme Court said in *Virginia* v. *Rives*, 100 U.S. 313, 323–24 (1879):

> In what case such a writ is warranted by the principles and usages of law it is not always easy to determine. Its use has been very much extended in modern times, and now it may be said to be an established remedy to oblige inferior courts and magistrates to do that justice which they are in duty, and by virtue of their office, bound to do. It does not lie to control judicial discretion, except when that discretion has been abused; but it is a remedy when the case is outside of the exercise of this discretion, and outside the jurisdiction of the court or officer to which or to whom the writ is addressed. One of its peculiar and more common uses is to restrain inferior courts and to keep them within their lawful bounds.

We do not doubt that denial below of the motion to dismiss rested upon a concept thought to serve the ends of justice. Nor are we unsympathetic with the expressed concern for apparently unnecessary delay. Having found, however, that the trial court has stepped beyond its "lawful bounds," we must perform the function which devolves upon us in such circumstances.[14] *Ex parte Peru*, 318 U.S. 578 (1943). In *La Buy* v. *Howes Leather Co.*, 352 U.S. 249, 259–60 (1957), the Court noted:

> We believe that supervisory control of the District Courts by the Courts of Appeals is necessary to proper judicial administration in the federal system. The All Writs Act confers on the Courts of Appeals the discretionary power to issue writs of mandamus in the exceptional circumstances existing here.

Respondent asserts that our grant of the writ would "destroy the right and prerogative of a trial court to proceed in an orderly manner within its sound discretion to make the ultimate determination as to

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[14] Respondent states that the petition is an attempt "to regulate the manner and the time in which matters submitted to this trial court should be determined" comparable to the reach for supervisory control over the Customs Service which petitioner sees in the orders below. The statement, however, assumes the existence of jurisdiction over the "matters submitted." Moreover, the matter of jurisdiction *should* be determined at the earliest moment. *Underwood* v. *Maloney*, 256 F. 2d 334 (CA 3), *cert. denied*, 358 U.S. 864 (1958).

the question of jurisdiction." But we can hardly destroy the right to make a decision already twice made. We can only, when required, undo the effect of an erroneous decision and thereby preclude its repetition.

This case does not involve the lower court's acceptance of jurisdiction to decide jurisdiction. That stage was passed when jurisdiction was found. (See note 12, supra.) Nor does this case involve a motion to dismiss for failure to state a cause of action. (See *Bell* v. *Hood*, 327 U.S. 678 (1946), describing the distinction.) Thus respondent's expressed intent to rule on an expected renewal of attack on its jurisdiction in the answer, "at a time which in the sound discretion of a trial court might be deemed appropriate," is of no moment. The appropriate time had passed, jurisdiction was lacking, and as above indicated, the court had no discretion to proceed further.

When, as here, all facts touching upon a challenged jurisdiction are of record, a court has at that point no right or prerogative to do other than to decide the question. When, as here, jurisdiction is clearly lacking, further proceedings cannot be permitted. The court had no power to order entry of judgment on an agreed statement or to order that an answer be filed. It had no power to do anything, other than to dismiss the action. The orders below were thus nullities, and respondent's position, that no harm was done because petitioner was given alternatives, is erroneous.

Though respondent twice decided, over vigorous protests and on a complete factual record, that jurisdiction existed, a lingering uncertainty is indicated by the order requiring settlement or a trial to determine jurisdiction, and by the statement in the response here that "the question is not quite so simple and clear cut." To cure that uncertainty, and potentially to avoid the jurisdictional charade involving an unnecessary trial of all "facts alleged by plaintiff" *prior* to "determination of the question of jurisdiction," the interlocutory appeal provisions of 28 USC 1541(b) were at hand.

Neither petitioner nor this court has been favored with a statement of specific reasons why the request for interlocutory appeal herein was denied. The granting of a request for interlocutory appeal is discretionary with both the Customs Court and this court. No rigid or universally applicable guidelines can be promulgated in advance to govern the exercise of that discretion. And when such requests are rare or rarely approved, case-by-case delineation of such guidelines is impeded. It would seem appropriate to suggest, however, that when faced with a repeated challenge to its fundamental right to

function, the challenge being based on § 1582 and supported by uncontested factual affidavits, and with all jurisdictional facts of record, a court would find it the better practice to grant a request under § 1541(b). Such action would appear particularly advisable when the court is unable to note a clear, specific statutory basis of jursidiction. Not every challenge to jurisdiction would justify the granting of such a request, of course, but in a case like the present, refusal to grant the § 1541(b) request may place the trial court in the undesirable posture of appearing to desire an exercise of jurisdiction as long as possible while frustrating the possibility of successful challenge. Granting the request for interlocutory appeal on the sole question of jurisdiction, under such circumstances, would be an exercise of that discretion which is the better part of valor. Vindication may await. If not, the very grant of the request tends to maintain the challenged court above the unseemly fray.

Respondent, *amicus*, and importer insist that petitioner has an adequate remedy, making in appropriate and premature the extraordinary relief here requested. The alleged remedy lies in proceeding to trial and potential prosecution of an appeal thereafter. But that "remedy" overlooks the anomaly of a court *trying* a case without having jurisdiction to do so. Reliance upon availability of that remedy as a sole basis for denying the writ would effectively nullify 28 USC 1651(a).

The argument has even more limited appeal when, as here, the writ is sought to prevent an extra-statutory attempt to exercise jurisdiction. A major purpose of keeping the issue of jurisdiction always open, and of requiring its prompt determination, is to *avoid* long, costly and unnecessary trials. *Underwood* v. *Maloney*, supra, note 14.

We are cited to wording in court opinions indicating: that the writ may be inappropriate where an adequate remedy, by appeal or otherwise, is available, such as *In re Rice*, 155 U.S. 396 (1894) and *Will* v. *United States*, supra; that the burden of proceeding to trial on the merits is insufficient ground for the writ, such as *Schlagenhauf* v. *Holder*, 379 U.S. 104 (1964); and that the mere fact that a lower court's finding of jurisdiction may ultimately be proven erroneous will not justify the writ, such as *National Right to Work Legal Defense* v. *Richey*, 510 F. 2d 1239 (CADC), *cert. denied*, 422 U.S. 1008 (1975) and *Stein* v. *Collinson*, 499 F. 2d 91 (CA8 1974). None of those authorities, however, involved the present insistence upon exercise of jurisdiction so clearly beyond the unambiguous provisions of the statute which confers jurisdiction. Neither this court nor the Customs Court has been presented with a rational or substantial legal argument in support of jurisdiction over the subject civil action. It is unavailing

to argue that a useless trial on the merits and a potential appeal constitute an adequate remedy under such circumstances.

Moreover, to force petitioner to trial of the subject civil action, before liquidation has occurred, is to interfere in the intermediate stages of the orderly operation of the Customs Service as it carries out its statutorily assigned liquidation function.

In the memorandum opinion, respondent indicated that a trial would cure any fear of the exercise of supervisory power which might stem from the provision of the order "relating to a voluntary settlement." But a trial would equally interfere. As is clear on the record, the liquidation process relating to the imports involved in the subject action has been halted in mid-stride and remains halted so long as the subject action remains in the Customs Court. The dictum in *United States Alkali Export Association* v. *United States*, 325 U.S. 196 (1945), condemned such short-circuiting of the functions Congress has directed an administrative agency to perform. Submission to interference cannot remedy interference. On the contrary, the only remedy for unauthorized interference is its cessation at the earliest opportunity.[15]

Conclusion

The Customs Court having no jurisdiction over the subject civil action, it was error to deny the motion to dismiss. The attempted exercise of jurisdiction in this case constitutes an exceptional circumstance requiring corrective action by this court.

Accordingly, respondent is prohibited from exercising jurisdiction for any purpose in the subject civil action. Mandamus is issued to the extent required to vacate the Customs Court orders of January 12, 1976, and March 1, 1976, to dismiss the subject civil action for want of jurisdiction and to return the involved official entry papers to the appropriate District Directors of Customs. It is, of course, unnecessary to prohibit respondent from engaging in conduct inconsistent with the present writ.

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[15] Respondent states that no showing has been made of an injury to the public interest sufficient to justify the writ. But the injury caused the public interest when courts exceed their jurisdiction and when prescribed operations of executive agencies are frustrated without authority is to us fully sufficient.

In arguing that petitioner would suffer no pecuniary injury if the writ were denied, *amicus* ignores the unnecessary expenditure of taxpayer funds for trial and appeal and presumes that the duties already paid by importer will, on liquidation, turn out to exceed or equal the total actually due.

Decisions of the United States Customs Court

Customs Rules Decision

(C.R.D. 76–12)

GUY B. BARHAM CO. ET AL. *v.* UNITED STATES

Court Nos. 75–10–02564, etc.

Ports of Los Angeles, New York, and Louisville

[Motion to dismiss and sever and dismiss denied.]

(Dated October 29, 1976)

Glad, Tuttle & White (*Robert Glenn White* of counsel) for the plaintiffs.
Rex E. Lee, Assistant Attorney General (*Edmund F. Schmidt*, trial attorney), for the defendant.

RICHARDSON, Judge: The question in this case is the same as the question raised in the case of *Fairfield Gloves et al.* v. *United States*, 77 Cust. Ct.—, C.R.D. 76–10, 10 Cust. Bul. No. 45, p. — (October 15, 1976), that is, whether the words "form, manner and style" are synonymous, and require that a summons must in all instances be physically received in the office of the clerk on or before the last day for filing in order for the Customs Court to acquire jurisdiction, or whether the court may by rule adopted pursuant to statutory authority deem a summons filed as of the date it is mailed as provided in Customs Court rule 3.2(b).

In the *Fairfield* case the court held that rules of court adopted in conformity with authority delegated by statute to make rules of practice, pleading and procedure have the same force and effect as if expressly included in the statute. The court further held that where Congress in 28 U.S.C.A. § 2632(a) delegates to the Customs Court authority to determine the manner of filing a summons, and mailing is recognized in statutes and decisions as a manner of filing, the Customs Court's promulgation of rule 3.2(b), which deems the date of mailing of a summons as the date of filing, is a proper exercise of the delegated authority.

No facts or legal principles have been presented in this case that were not considered in the *Fairfield* case, and that case is *stare decisis* and governs the issue in this case. For a full discussion of the reasons and authorities in support of the conclusion reached in the *Fairfield* case see the decision in that case.

Ordered that the summonses in the actions listed on the attached schedules "A" and "B" were timely filed, and the defendant's motion to dismiss and sever and dismiss is hereby denied.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *November 1, 1976.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P76/235	Ford, J. October 27, 1976	The Akron	72-6-01375, etc.	Item 653.37 11% or 9.5%	Item 653.35 6% or 5%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1156, 1157)	Los Angeles Candleholders, candlesticks, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P76/236	Ford, J. October 27, 1976	The American Import Co.	75-4-00804	Item 653.37 9.5%	Item 653.35 5%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1156, 1157)	San Diego Candleholders, candlesticks, etc.
P76/237	Ford, J. October 27, 1976	W. J. Byrnes & Co., a/c Baltam Trading, Inc.	71-11-01880	Item 653.37 13%	Item 653.35 7%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1156, 1157)	Seattle Candleholders, candlesticks, etc.
P76/238	Ford, J. October 27, 1976	Bruce Duncan Co., Inc., a/c Hong Horizons, Inc., et al.	71-8-00695, etc.	Item 653.37 15%, 13%, 11% or 9.5%	Item 653.35 8%, 7%, 6% or 5%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1156, 1157)	Los Angeles Candleholders, candlesticks, etc.
P76/239	Ford, J. October 27, 1976	Hallmark Cards, Inc.	71-6-00464, etc.	Item 653.37 13%, 11% or 9.5%	Item 653.35 7%, 6% or 5%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1156, 1157)	Kansas City (St. Louis) Candleholders, candlesticks, etc.
P76/240	Ford, J. October 27, 1976	New York Merchandise Co., Inc.	70/81258	Item 653.37 15%	Item 653.35 8%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1156, 1157)	Portland, Oreg. Candleholders, candlesticks, etc.

P76/241	Maletz, J. October 27, 1976	General Instrument Corporation	73-6-01513, etc.	Item 682.05 12.5%	Item 685.25 11%, 10%, 8.5%, 7% or 6%	Agreed statement of facts	New York Combinations of transformers and capacitors (intermediate frequency filters)
P76/242	Ford, J. October 28, 1976	Associated Dry Goods Corp.	70/3398, etc.	Item 653.37 19%, 17%, 15%, 13%, 11% or 9.5%	Item 653.35 10.5%, 9%, 8%, 7% or 6.5%	Morris Friedman & Co. v. U.S. (C.D. 4561, aff'd C.A.D. 1156)	New York Candlesticks, candleholders, etc.
P76/243	Ford, J. October 28, 1976	Ross Products (Div. of NMS Ind., Inc.), et al.	71-10-01544, etc.	Item 653.37 17%, 15%, 13%, 11% or 9.5%	Item 653.35 9%, 8%, 7%, 6% or 5%	Morris Friedman & Co. v. U.S. (C.D. 4570, aff'd C.A.D 1157	New York Candlesticks, candleholders, etc.
P76/244	Maletz, J. October 28, 1976	New York Merchandise Co., Inc.	74-12-03531	Item 688.10 20% applied to appraised constructed value	Items 807.00/ 688.10 20% assessed against invoiced unit values (held constructed value) less costs of fabricated components which are products of U.S., packed	Agreed statement of facts	San Diego Christmas tree lighting sets

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R76/117	Watson, J. October 27, 1976	Spiegel, Inc.	73-7-01803	Export value	Invoiced ex-factory prices plus amounts shown on each invoice for hauling and lighterage, cartage, insurance and petties	Agreed statement of facts	Chicago Wearing apparel

R76/118	Ford, J. October 28, 1976	J. L. Wood	72-2-00284, etc.	Export value	Various invoice values less duty or other nondutiable charges included in said invoice values	J. L. Wood v. U.S. (C.A.D. 1139)	Pembina Engine heaters (with or without cords), car warmers, etc.
R76/119	Watson, J. October 28, 1976	Sandoz, Inc.	R70/1688, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 31.1% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.32 or such other factor applied by customs officer, to allow for customs duties payable on imported drystuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

Judgment of the United States Customs Court in Appealed Case

OCTOBER 27, 1976

APPEAL 76–34.—Russ Berrie & Co., Inc. *v.* United States—PAPIER-MACHE FIGURINES—DOLLS—ARTICLES OF PAPIER-MACHE—TSUS.—C.D. 4659. Appeal dismissed October 27, 1976.

ERRATUM

In Customs Bulletin, Vol. 10, No. 37, dated September 15, 1976, in R.D. 11778 on page 24 in the first indented paragraph should read:

Sec. 201. *Basis of Dutiable Value*

Index

U.S. Customs Service

Court of Customs and Patent Appeals

Customs Court

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PUBLIC DOCUMENTS DEPARTMENT
WASHINGTON, D.C. 20402

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